IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Manoj Kumar vs. Mevaram Mehta

(S.B. CIVIL WRIT PETITION NO.3105/2005)

DATE OF ORDER ::: JULY 15, 2005

P R E S E N T

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr. Girish Joshi, for the petitioner.

BY THE COURT :

REPORTABLE

Heard learned counsel for the petitioner.

The petitioner/plaintiff says that the delay with which he has raised objection is immaterial and the delay which was committed by the respondent/defendant in contesting the suit is more material to the extent that the defendant may be deprived from raising of the defence in a civil suit.

This has happened because of the fact that as per Rule 1 of Order 8 CPC, the defendant is required to file written statement within thirty days from the date of service of summons on him. Proviso to Rule 1 of Order 8 CPC provides that in case, the defendant fails to file the written

statement within thirty days period from service of summons upon him, he can be allowed to file the written statement only upto the period of ninety days that too from the date of service of summons only. That is not enough but for that purpose, the defendant is required to satisfy the Court by showing reasons for not filing the written statement within thirty days as provided under Rule 1 of Order 8 CPC.

In this case, the relevant dates are that the defendant was served with summons on 21.4.2004, therefore, he could have submitted written statement by 21.5.2004. He did not file the written statement by 21.5.2004. The suit proceedings continued without any adverse order against the defendant upto 29.7.2004 and on 29.7.2004, the defendant submitted written statement. By that time, even period of ninety days also expired within which the defendant could have submitted the written statement. It will be worthwhile to mention here that the plaintiff, without whose presence, the suit could not have proceeded did not raise any objection about not filing of the written statement by the defendant even when the defendant did not submit the written statement in thirty days and thereafter, in ninety days. Not only this but the plaintiff did not objected to Court's adjourning case for filing the written statement beyond the entire period of 90 days for specific purpose of filing written statement. Be it as it may be, without any objection of the plaintiff and without there being any objection from the Court, when the case was fixed for filing written statement on 29.7.2004, the defendant

submitted the written statement on 29.7.2004 in the Court and that was taken on record.

The plaintiff, who wanted to take benefit of the amended provisions of CPC providing for speedy disposal of the suits and disposal of the suit in time frame, remained a silent spectator, obviously so that he may have a march over the defendant as timely objection by the plaintiff against adjourning the case for filing written statement would not have placed the plaintiff in advantageous position to which he wants to reach. As stated above, the period of ninety days expired. Not only this, but when the written statement was filed on 29.7.2004, no objection was raised by the plaintiff. The plaintiff raised objection against taking written statement on record after about 14 days i.e. on 22.8.2004.

According to learned counsel for the petitioner, the limitation given in Rule 1 of Order 8 CPC is mandatory and even the Court has no jurisdiction to extend the period of limitation without recording any reason for allowing the defendant to file written statement beyond the period of thirty days.

Learned counsel for the petitioner also submitted that the Hon'ble Apex Court in the case of Kailash vs. Nanhku and others reported in (2005) 4 SCC 480 held that a prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. Upon which only, the

Court can exercise judicial discretion on well settled principles and the court may put the defendant on terms including imposition of compensatory costs and may also insist for an affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the court that the prayer was founded on grounds which do exist. The Hon'ble Apex Court in the above case also held that the extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the Court.

According to learned counsel for the petitioner, in view of the judgment of the Hon'ble Apex Court, the court below committed serious error of law in permitting defendant to submit the written statement after 30 days and further in rejecting the petitioner's application for putting the defendant's written statement out of record.

The order dated 25.7.2004 has been challenged by the petitioner by filing writ petition which is supervisory jurisdiction of the Court and the supervisory jurisdiction is required to be exercise to do the justice and to do justice, all relevant facts are required to be looked into.

The aim and object behind amendment of Code of Civil Procedure is to avoid delay in trial of the suit and for that purpose, rigorous provisions have been made. Much time

has not flown from the period of amendment in CPC, therefore, it may take some time to have actual effects of the amendment. Let the parties and the learned advocates to know the consequences of their failure in keeping pace with time frame for deciding the suits by the trial courts. The object of amendment was never to scuttle the defences of the defendants so as to decide the suits always in favour of the plaintiffs. The object behind amendment in the provisions of CPC is unambiguously clear that the trial be completed as early as possible and as far as possible within the time provided under the CPC which includes the time for the steps to be taken by the parties. It does not mean that those provisions have been made for speedy decision of the suits gives any unfettered right with no limitation to the plaintiffs to raise objection and they can raise objection as and when they wish to raise on the basis of technicalities of law. It will be too harsh if it is held that total defence of the defendant can come to an end if the written statement is filed beyond period of 90 days but the plaintiff in whose presence the trial court extended time to file written statement by giving one after another adjournment, can raise objection against the defendant's filing written statement even after 90 days. Therefore, the sub-rule (1) of Order 8 CPC specifically provides time within which the defendant should file the written statement and it cast a duty upon the court to follow procedure as provided in sub-section (1) of the Section 8 CPC and as provided in Proviso to sub-section (1) of the Section 8 CPC. It is also implied duty of the

plaintiff to remain vigilant in Court and he cannot, by his conduct or by his deliberate silence or negligence (rarely) allow the court to adjourn the case for filing written statement of the defendant beyond period of thirty days or ninety days for filing written statement by defendant and thereafter, raise objection, which in fact is objection against the court's order to adjourn case for filing written statement by the defendant. Plaintiff's remaining silent spectator (obviously every one can know the intention behind his silence), the plaintiff may try to achieve his object of winning a case by default ; the default of court as the Court did not care to look into the case while adjourning the case and default of advocate and party who remained negligent. The result in either case is at the cost of justice only.

It is true that there is no provision made in CPC casting a duty upon the plaintiff to raise objection on non-filing of the written statement by the defendant and it is also not provided in Rule 1 of Order 8 CPC that what will happen when the Court specifically passes an order and gives time to the defendant to file written statement and the defendant accepted the Court's order as permission for filing the written statement on subsequent date. This is happening because of the fact that the amended provision of Rule 1 of Order 8 CPC is still not followed strictly by the parties as well as by the Courts. Not only this, but when there are changes in law, not only the litigants but even the advocates failed to notice the rigor of law unless

someone suffers injury, is apparently clear from the litigation which are coming before High Court from trial courts day and day where the trial courts entertained the objections of the plaintiff for not filing the written statement by the defendant in time and the trial court passed the order of taking out of the record the written statement already filed ignoring the fact that whether the trial court should have entertained the objection of the plaintiff at such belated stage about late filing of the written statement when the objection itself has been raised after delay or inordinate delay.

The true aim and object of these provisions can be achieved only if the delay in trial is avoided. If such type of objections are permitted to be raised by the plaintiff, then that will also lead to not only delay in trials but they may normally result into injustice because the closing of defence of the defendant. Closing defence of the defendant is a grave matter and when the consequences are grave, then the provisions are required to be construed strictly and for strictly construing the provisions, the courts are required to keep in mind the object for which the provision of law was enacted and should not read the words and letters of the statutory provision. If there is no provision in CPC providing for limitation of raising objection about late filing of written statement, that doesn't mean that the plaintiff gets the right to raise objection even after when the defendant has submitted written statement in Court and the Court has already took

on record the written statement.

It will be worthwhile to mention here that in case, the plaintiff will be vigilant, there will be no delay and further there will be no injustice. The only object of not raising objection by the plaintiff against the non-filing of the written statement by the defendant within thirty days and waiting for expiry of ninety days normally demonstrates that the plaintiff himself was not only negligent but he wants to take the advantage out of rigorous provision of law by default of the party as well as of the Court. It will be further relevant to mention here that the duty has been cast upon the court not to allow the written statement on the record if filed beyond the period of thirty days from the date of service of summons upon the defendant. Still if the court passes an order specifically allowing filing of written statement by the defendant and for fixing the date for written statement, then why defendant be punished and to allow the plaintiff to take advantage of his own wrong or his negligence in conducting the case. Not only this, but looking to the pendency of the cases and the courts overcrowded with work, if the court has not calculated the days from the service of summons and if the plaintiff has not assisted the court and did not obtain an order in his favour, he cannot say that the extreme harsh step may be taken against the defaulting defendant.

It is true that the reasons are required to be shown by

the defendant in case he failed to submit written statement in time. In this case, it appears that after the objection of the plaintiff, the defendant submitted an application for condonation of delay which according to learned counsel for the petitioner, constitute no cause for extension of time.

The trial court considered all these facts and thereafter rejected the petitioner's objection vide order dated 25.4.2005, which is impugned.

As stated above, this is supervisory jurisdiction of the court and even if there is illegality in the order, this Court is not under obligation to correct even illegality which may result into great injustice to any party.

The Hon'ble Apex Court in Kailash's case (supra) relied upon by the petitioner observed as under :-

> “It must be spelled out by the court concerned that a departure from the time schedule prescribed by Order 8 Rule 1 CPC was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.”

Despite the use of word “shall” in proviso to Rule 1 of

Order 8 CPC, the Hon'ble Apex Court itself held that the defaulter can pray for extension of time even beyond ninety days which is the outer limit provided under the Proviso to Rule 1 of Order 8 CPC. Therefore, the true effect of the judgment of the Hon'ble Apex Court can be given by carefully avoiding the delays which may result because of the technical objections and grave injustice can be avoided by non-interference by this Court under Article 227 of the Constitution of India when the written statement filed has been taken on record and objection has been raised by the plaintiff after inordinate delay. If one cannot file written statement after 30 days or after 90 days as extended period, then what is the reason for entertaining the objection of the plaintiff when the written statement has already been filed by the defendant.

In view of the above, if this Court will entertain the writ petition against such order, the other party will be required to be heard and thereafter appropriate order can be passed. Meaning thereby, the proceedings before the trial court is required to be stayed and stay may continue for years also and that will again destroy the purpose for which the Code of Civil Procedure has been amended. By this, this Court will do what the defendant could have done by lingering on the litigation before the trial court. Therefore, this Court is not inclined to interfere in such an order and the plaintiff should not have opted for raising objection before the trial court after such an inordinate delay and should not have preferred this writ

petition as the plaintiff/petitioner should have understood that any order passed in this writ petition would have delayed his own case. It cannot be ruled out that the intention of the petitioner was never for early disposal of the suit on merits but to take benefit of technicalities of law only.

In view of the above discussion, this writ petition, having no force, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya